HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P.MS No. 280 of 2006

Sh. Diwan Singh

Vs.

I Additional Civil Judge

Junior Division, Dehradun

Approved for reporting

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~~Not approved for reporting~~

Date of decision 10.5.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 280 (MS) OF 2006

Sh. Diwan Singh,
S/o Sh. Prem Singh,
7 Court Road, Dehradun.
through his Attorney Sh. Munna Lal Gupta,
S/o late Sh. Ram Chandra R/o 207 Luniya Mohalla Dehradun.
.....Petitioner.

Versus

1. I Additional Civil Judge, Junior Division, Dehradun.
2. Sh. Chander Prakash Goyal. S/o Sh. Nathu Mal, R/o Mohalla Aali Mahajnam Khalapar, Saharanpur.
3. Sh. Satya Prakash Goayl, S/o Sh. Nathu Mal, R/o 7, Court Road, Dehradun. .....Respondents.

Dated: 10.05.2006

Hon'ble Rajesh Tandon, J.

Heard Shri V.K. Kohli, Sr. Advocate, assisted by Sri I.P. Kohli, Advocate for the petitioners and Standing Counsel for the respondent no.1.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 14th December, 2004 passed by the Ist Addl. Civil Judge (Junior Division) in Suit No. 239 of 2000 Sh. Chander Prakash Goyal Vs. Sh. Diwan Singh so far as the rejection of the application of the petitioner moved under Order 7 Rule 11 CPC and also allowing the application of the respondent no. 2 for impleadment of Sh. Satya Prakash Goyal, S/o Sh. Nathu Mal, 7 Court Road, Dehradun and also the amendment of the plaint is concerned.

Briefly stated, a suit was filed by the respondent no. 2 being Suit No. 239 of 2000 praying for the following reliefs:-

"a) A decree for realisation of a sum of Rs. 18,500/- be passed in favour of the plaintiff and against the defendant.

(d) Future and pendentelite interest at the rate of 18% per annum be awarded on the decreetal amount to the plaintiff and against the defendant.

(e) Full Cost of the suit be awarded in favour of the plaintiff and against the defendant..

(f) Any other relief which the learned court deems fit and proper under the facts and circumstances of the case may also very kindly be granted in favour of the plaintiff and against the defendant."

According to the plaint, the plaintiff Chander Prakash Goyal along with Shri Satya Prakash Goyal has purchased the property bearing No. 7-Court Road (Kutchery Road), Dehradun vide sale deed dated 15th January, 1974 from Rama Krishna Mission, which is registered in the office of Sub Registrar, Dehradun in Book No. 1, Vol. 1169, at pages 17/26 at Sl. No. 1158 and which was registered on 14.06.1974. In paragraph 3 of the plaint it has been mentioned that the defendant is a month to moth tenant in a portion of the property bearing no. 7 Court Road Dehradun comprising one shop on a monthly rent of Rs. 2,000/- (Rs. Two Thousand) and Rs. 600/- (Rs. Six Hundred) respectively and the plaintiff is entitled to 37% of the rent and as such he has claimed the rent of Rs. 18,500/- in his favour. In paragraph 7 of the plaint it has been stated that before filing the suit, a legal notice dated 13th August, 1998 was also sent to the defendant, which was served upon the defendant. In spite of the notice, since the amount was not paid, therefore, the suit was filed.

During the pendency of the suit, an application was filed by the defendant praying that the suit is not cognizable by the Civil Court in as much as notice has been issued for recovery of the amount towards rent as such suit is not maintainable in the civil Court. Section 15 of the Small Cause Court Act reads as under:-

"15. Cognizance of suits by Courts of Small Causes. *–(1) A Court of small Causes shall not take cognizance of the suit specified in the Second Schedule as suits excepted from the cognizance of a Court of Small Causes.*

(2) Subject to the exceptions specified in that Schedule and to the provisions of any enactment for the time being in force, all suits for a civil nature of which the value does not exceed five hundred rupees shall be cognizable by a Court of Small Causes.

(3) Subject as aforesaid, the State Government may, by order in writing, direct that all suits of a civil nature of which the value does not exceed one thousand rupees shall be cognizable by a Court of Small Causes mentioned in the order

Provided that in relation to suits by the lessor for the eviction of a lesseee form a building after the determination of his lease or for recovery from him of rent in respect of the period for occupation thereof during the continuance of the lease. Or of compensation for use and occupation thereof after the determination of the lease, the reference in this sub-section to five thousand rupees shall be construed as a reference to twenty-five thousand rupees.."

As will appear form the proviso to Section 15 that the jurisdiction of Small Cause Courts has jurisdiction to entertain the suit either during the continuance of the lease or compensation for use and occupation thereof after the determination of the lease.

In the present case, since the plaintiff has filed the suit alleging himself to be the lessor and the petitioner to be the lessee and therefore, the suit being cognizable by Small Cause Courts due to the extent of the amount which has been claimed by the plaintiff towards the rent to the extent of 37%

So far as the entertainment of the plaint by the Civil Judge is concerned, the same is barred by the provision of Section 15 of the Provincial Small Causes Courts Act. The plaint is, therefore, liable to be presented before the appropriate Court i.e. Small Causes Court.

In view of the aforesaid facts, the order-dated 14.12.2005 is quashed. The plaint shall be returned to the plaintiff for presentation to the appropriate Court. In case the plaint is presented before the small Causes Court, the Court shall proceed with the hearing of the suit expeditiously preferably within a period of six months form the date of presentation of the certified copy of the order.

Writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

10.05.2006
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